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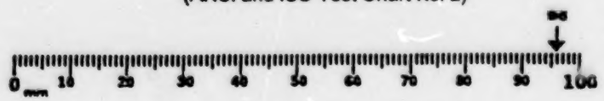

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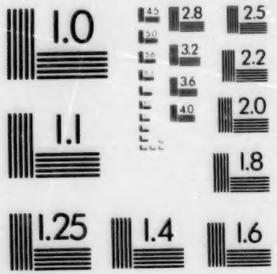

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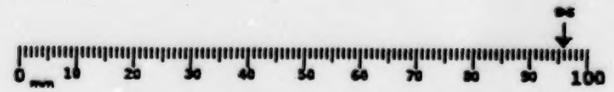

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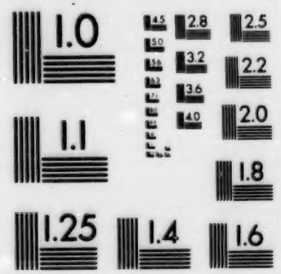

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OFFICE OF THE
POLICE COMPLAINT
COMMISSIONER
British Columbia
Canada

Speaker of the Legislative Assembly
Room 207, Parliament Buildings
Victoria, B.C.
V8V 1X4

Dear Honourable Speaker:

I present to you and to the members of the Legislative Assembly the 2001 Annual Report, for Don E. Morrison, former Police Complaint Commissioner.

Yours truly,

Barbara Murphy
A/Police Complaint Commissioner

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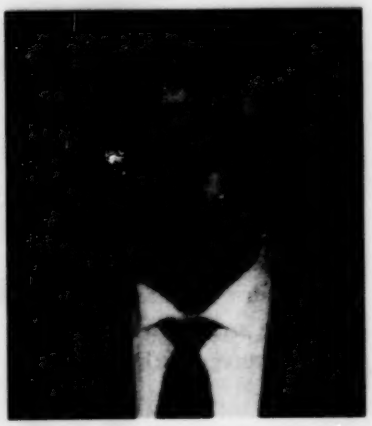
Commissioner's Message: "A Delicate Balance"

I am pleased to present the annual report for 2001. This is the fourth report outlining the activities of the Police Complaint Commissioner, established in 1998 as a result of the extensive examination of policing conducted by Justice Wallace Oppal.



Justice Oppal recommended a model for civilian oversight of police complaints in which the police themselves investigate complaints into wrongdoing, with a civilian agency responsible for overseeing the investigation to ensure an appropriate level of public accountability.

As with any new program, there are many choices to be made and many options available. Since my appointment as Police Complaint Commissioner, I have directed the work of my office so as to maintain a balance between those who see the role of civilian oversight as one in which there is predominately a cooperative role, assisting in promoting remedial and corrective policies only, and those who see the role of civilian oversight as one in which the agency plays an adversarial role strongly advocating for the complainant.

My view is that the model adopted by the British Columbia legislature in accepting Justice Oppal's recommendations involves a delicate balancing of these two extremes. The role of the Police Complaint Commissioner is to be impartial and neutral. The past year has provided many opportunities for me to demonstrate how this balance and impartiality was achieved for the benefit of all British Columbians, including, of course, the police themselves.

First of all, let me describe the context in which I must make very difficult decisions. Many of the complaints that are made derive from situations in which there is a high level of volatility. Alcohol and violence are often factors that complicate an already charged situation. The police must exercise judgment quickly and may be required to use force. Other complaints derive from situations in which there are differing views on the interpretation of civil and human rights. Again, the police actions are based on their ability to understand and respect these rights and weigh them against their view of the public peace and protection of life and property. Still other complaints derive from situations in which law enforcement officers use their positions inappropriately and seek to by-pass the legal protections afforded accused persons under the rule of law.

My job is to ensure that there is public accountability. If the investigative and disciplinary actions taken by the police are appropriate, I may have no further role. However, even if these actions are appropriate, there may still be a need for a complete public airing of the matter through a public hearing; or there may be a need for a public inquiry into the broader social issues raised by the matter; or there may be a need for a thorough systemic review to ensure that there is no recurrence of the situation which led to the complaint. Whatever my decision, I must be impartial and fair. I must weigh complex evidence and make a decision that is not inappropriately influenced by any of the parties — not the police, not the complainant, not the politicians.

During this year, I have made my share of difficult decisions. I include in this the decision to recommend that the Solicitor General undertake a province-wide review of conditions relating to the release from custody of persons who are incapable of caring for themselves. The matter that gave rise to this decision was the tragic death of Frank Joseph Paul. My intent in making this request of the Solicitor General was that every effort be made to examine the policies and practices of police, even though it seemed to me inappropriate to re-examine the specific discipline meted out to the officers involved in the release of Mr. Paul from police custody. Further information on this matter is found in the body of my report in the section titled "Referral to the Solicitor General." The Solicitor General has agreed to include the issue of detention and release of persons who are, or may be, unable to care for themselves in the next regular audit of police agencies in the province.

In my report to the Special Committee reviewing Part 9 of the *Police Act* that governs the work of my office, I specify legislative reform recommended on the basis of the last four years of operation. Critical among these recommendations is that the Police Complaint Commissioner be given power to call a public inquiry. Under the Act, I have the power to call a public hearing which focuses on the specific actions of officers under investigation for disciplinary default. This additional power to order a public inquiry would improve public accountability and redress many of the deficiencies we have experienced in the public hearing process. For example, it would enable us to look at broader systemic issues, we could compel all officers to testify, and the inquiry could be more remedial in nature. The full discussion paper submitted to the Special Committee is included in the Appendices to this report.

This year we have continued to facilitate various police training events aimed at providing police with appropriate educational opportunities. We have also attended numerous community-based meetings aimed at ensuring that the most marginalized of our citizens have an awareness of this office and have access to it.

We are well on our way to having an effective responsive system. We will never satisfy those critics who want this office to be vocal advocates on behalf of complainants. We will never satisfy those critics who want this office to work solely behind the scenes with police and avoid any public hearings. The effective

responsive system envisioned in the Oppal Report is one in which there is a balance between those extremes. This year has been one in which we have fought vigorously at all levels of court in this province to preserve that balance.

Our model is one in which we will work with the police to promote ethical decision-making, and one in which every member of the public can be assured that there will be an independent civilian review process free from any police or political interference.

Role, Mandate, and Purpose

The Office of the Police Complaint Commissioner is an independent agency established under the *Police Act* to ensure that complaints against municipal police in British Columbia are handled fairly and impartially.

There are 12 municipal police departments and three First Nations police services in British Columbia:

- Abbotsford Police Department
- Central Saanich Police Department
- Delta Police Department
- Dididat First Nations Public Safety & Police Service
- Esquimalt Police Department
- Kitasoo Xiaxas Public Safety Department
- Nelson City Police Department
- New Westminster Police Service
- Oak Bay Police Department
- Port Moody Police Department
- Saanich Police Department
- Stl'atl'imx Tribal Police Service
- Vancouver Police Department
- Victoria Police Department
- West Vancouver Police Department

Complaints concerning any one of the 12 departments and the Stl'at'lmx Tribal Police Service, or complaints about the policies of a department, fall under the mandate of the OPCC.

Complaints regarding special provincial constables of the Dididat First Nations Public Safety and Police Service and the Kitasoo Xiaxas Public Safety Department are subject to the Special Constable Complaint Procedure Regulation. The Director of Police Services Division of the Ministry of Attorney General has delegated that authority under the Regulation to the Police Complaint Commissioner.

The Office of the Police Complaint Commissioner provides an accessible way for the public to complain to an independent body about the conduct of any municipal police officer. The OPCC was established to ensure that the complaint process is conducted with impartiality and fairness, both to members of the public and to members of the municipal police forces.

The Complaint Process

Who can make a complaint?

Anyone who has concerns about the actions or comments of a municipal police officer or the service provided by a municipal police department may make a complaint.

How are complaints made?

A complaint can be made either orally or in writing, but before it can be processed under the *Police* Act, it must be made in writing, on an approved form (Form 1, Record of Complaint). After a complaint has been made, it can be withdrawn at any time.

What happens to the complaint?

The Office of the Police Complaint Commissioner forwards all complaints received to the appropriate police department for investigation. If the complaint is made at a police department, copies are to be forwarded to the Office of the Police Complaint Commissioner.

The police department investigating a complaint must report to the Police Complaint Commissioner at each stage of the investigation to advise the Commissioner what is happening with the complaint. The complainant is also provided with ongoing information about his or her complaint.

Three types of complaints can be made: *Public Trust, Service and Policy,* or *Internal Discipline.* Depending on the circumstances described in the complaint, all complaints will be characterized as one of these types. Each type of complaint is processed differently.

Most complaints fall under the Public Trust category and are processed in the following manner:

Public Trust Complaints

Public trust complaints affect the relationship between a police officer and the community and allege specific misconduct on the part of a police officer. A public trust complaint will be resolved in one of three ways:

1. **Informal Resolution**

Public trust complaints may be resolved informally by face-to-face discussions, by letter, by telephone, or with the help of a professional mediator. A complaint is resolved when both parties to the complaint (the complainant and the police officer) have given their signed consent, after which either party has 10 days to

withdraw his or her consent in writing. Otherwise, the informal resolution is final and binding.

2. Summary Dismissal

A public trust complaint may be dismissed if there is no likelihood that further investigation would produce evidence to substantiate the complaint, if the complaint concerns a matter that happened more than 12 months ago, or if the complaint is deemed to be frivolous or vexatious. If the complainant disagrees with the department's decision to dismiss the complaint, he or she can apply to the Police Complaint Commissioner for a review of the police department's decision.

3. Investigation and Conclusion

A public trust complaint will be investigated if it is not informally resolved or summarily dismissed. The complaint will be investigated by the police department involved or may be referred by the police department or by the Police Complaint Commissioner to another police department to investigate.

The investigation into a complaint must be completed within six months after the date the approved complaint form was filed. The Police Complaint Commissioner may grant an extension of this time. If the complainant is unhappy with the results of the investigation, he or she may apply to the Police Complaint Commissioner for a public hearing.

Service or Policy Complaints

Service or policy complaints are complaints about the policies, procedures, and services provided by a municipal police department. An example of a service or policy complaint would be a complaint that insufficient police officers were stationed at a public event.

Service or policy complaints are the responsibility of each police board. The police board must advise the Police Complaint Commissioner and the complainant of the results, including what course of action, if any, was taken and must provide a summary of the results of any investigation or study.

The Police Complaint Commissioner cannot require a board to take any particular course of action regarding a service or policy complaint, but may make recommendations.

Internal Discipline Complaints

Internal discipline complaints concern police misconduct that is of concern to the officer's employer but does not affect the officer's relationship with the public. An example of an internal discipline complaint would be that a police officer did not secure his or her firearm properly in the police locker. The principles of labour law apply to the investigation and processing of internal discipline complaints. The public trust complaint process does not apply.

Referral to the Solicitor General

Part 9 of the *Police Act* empowers the Commissioner to refer serious matters to the Solicitor General. During 2001, the Commissioner referred to the Solicitor General a matter relating to the death of a person who was released from police custody when he may not have been able to care for himself. The Commissioner recommended that the Chief Coroner be ordered to conduct an inquest into the circumstances of the death of a person who had been in police custody, and further recommended that a province-wide review be undertaken to determine whether policies and practices of British Columbia police adequately address the duty of care owed to people who are unable to care for themselves at the time of release from police custody.

Background

In August 1999, the police department initiated a complaint under the *Police Act*. Both the department and the Police Complaint Commissioner characterized the complaint as involving public trust. Pursuant to section 65(4), the *Police Act* proceedings were suspended pending the conclusion of criminal proceedings.

Mr. P was arrested by police for public intoxication. Several hours later, Mr. P was released following assessment by a jail nurse. He was able to care for himself at that point. Three hours later, Mr. P was again arrested for public intoxication. He was unable to sit up or walk, and was largely incoherent. The arresting officers turned Mr. P over to Officer A, who transported him to the jail. Mr. P was dragged to the jail elevator. Officer B was in charge of the jail and had dealt briefly with Mr. P earlier. Officer B determined, without input from the jail nurse, that Mr. P was suffering from a medical malady, not extreme intoxication. He directed Officer A to "breach" Mr. P to a different area of town, near where Officer B thought he lived. "Breaching" is a process that allows the arrest, transport from an area and release of persons who commit, or who are likely to commit, a breach of the peace.

Officer A breached Mr. P, leaving him in an alley behind a Detox center .Officer A was advised by other police officers that Officer B was mistaken about Mr. P's residential area and that in fact Mr. P had no residence, often slept outside and on many occasions had declined shelter. Mr. P's clothing was wet. Video and forensic pathology evidence indicates that Mr. P was likely unable to care for himself at the time he was breached. Mr. P was found dead several hours later.

As is required by law, the police department notified the Coroner of Mr. P's death. In accordance with internal police department policy, a review was undertaken of the circumstances surrounding Mr. P's release. The police officers involved submitted the required duty report. The results of a criminal investigation were referred to Crown counsel to consider criminal charges.

The *Coroners Act* requires an inquest when a person dies in police custody and otherwise allows an inquiry. Both processes require the Coroner to determine

who, where, when, how and by what means a person died. Neither allows the coroner to assign blame. Because Mr. P was not in the actual custody of police at the time of his death, an inquiry was conducted. On November 9, 1998, the Coroner classified Mr. P's death as accidental, caused by "hypothermia due to or as a consequence of acute intoxication." The Coroner made several recommendations about the need for education, policies and procedures for dealing with persons who may have medical disabilities. The Coroner's recommendations were accepted and implemented by the police department. As well, the police board provided further policy information regarding police duties and responsibilities for the safe transport of prisoners.

On December 21, 1999, Crown counsel advised that criminal charges were not appropriate against any of the officers involved with Mr. P. In closing, Crown counsel concluded that "The sad and unfortunate conditions of P's life make the task of distinguishing between circumstances likely to expose him to endangerment, and simply returning him to the context of his daily experience, more difficult than not."

The *Police Act* proceedings against the two police officers were concluded in March and June of 2000. Without the need for a discipline hearing, both officers acknowledged responsibility for their actions. Officer A admitted to Neglect of Duty, and accepted a one-day suspension. Officer B admitted to Discreditable Conduct, and received a two-day suspension.

OPCC staff started a review to determine what action should be taken. A forensic pathologist reviewed the file and offered the opinion that Mr. P's death could have been prevented if his condition had been medically assessed and he had not been removed from the police jail and left in an alley exposed to rain and cold.

On December 12, 2000, the Police Complaint Commissioner referred the matter for a second time to both the Coroner and Crown counsel.

The Coroner declined to reopen the file, based on a determination that the case did not fit the criteria for an in-custody death and that the requirements of the *Coroners Act* had been met.

On August 13, 2001, Crown counsel responded that the file had been reviewed with the benefit of the further information obtained or provided by the OPCC, including a jail videotape, the forensic pathologist's opinion, and an analysis by OPCC counsel. Crown counsel again concluded that charges were not appropriate.

At that point, it had been nearly 2 years and 8 months since Mr. P's death.

On August 21, 2001, all options were considered again with respect to addressing the specific incident of Mr. P's death and the possibility of broader systemic problems regarding the detention and release of persons who are unable to care for themselves. The Commissioner decided that no public hearing would be arranged. Substantive findings against Officer A and Officer B, for the disciplinary defaults of Neglect of Duty and Discreditable Conduct, respectively, had been made, and discipline imposed.

The Referral

On October 4, 2001, the Commissioner referred the following matter to the Solicitor General:

> "In my capacity as Police Complaint Commissioner, I have become aware of cases in BC where police have released persons in circumstances that have led to, or had the potential to lead to, injury or death of the person.
>
> Pursuant to section 50(3) of the Police Act, I am recommending that you undertake a review of police policies and practices concerning the detention and release of persons who are, or may be, unable to care for themselves.
>
> The standard of care owed by police to prisoners is well established by statute and case law. The positive duty of care persists beyond release or time when those persons are turned over to the care of another. Courts have determined that police have a duty of care to individuals who they release when, by virtue of circumstances, individuals are unable to care for themselves.
>
> . . . .
>
> Police in BC have policies and practices similar to those under investigation in Saskatchewan. These practices included the one commonly known as 'breaching' that is used to arrest, transport, and subsequently release persons as an alternative to detaining them in jail or placing them in other facilities.
>
> In those cases, a public hearing under Part 9 of the Police Act may assist in determining the extent to which police did, or did not, meet the required duty of care with respect to a specific person. However, the Police Act hearing is limited to police conduct. Such hearings may not bring to light what may be systemic problems or practices within police agencies nor can they examine the duty of care that may be owed by other agencies into whose care people may be released.
>
> It is unclear whether policies and practices of BC police adequately address the duty of care owed to people who are unable to care for themselves at the time of release from police custody.
>
> In light of the seriousness of potential consequences for citizens in all BC policing jurisdictions, I am recommending a province-wide review be undertaken."

The Solicitor General agreed with the Commissioner that it would be timely to conduct an evaluation of police policies and practices concerning the detention and release of persons who are, or may be, unable to care for themselves. The Director of Police Services has been asked to include the issue as the next "high-risk" item for examination in the regular audit of police agencies within the province.

Public Hearings

The *Police Act* allows the Police Complaint Commissioner to order public hearings into complaints.

At the conclusion of an investigation into a complaint, either the complainant or the respondent police officer may request a public hearing.

If the respondent police officer has received a disciplinary measure more severe than a verbal reprimand, he or she has an automatic right to a public hearing on request.

If the complainant requests a public hearing, the Police Complaint Commissioner must determine if there are grounds to believe the hearing is necessary in the public interest.

The Commissioner may also arrange a public hearing without having received a request from either the complainant or the respondent police officer if the Commissioner believes that the public hearing is necessary in the public interest.

The Commissioner will consider the following factors before making the decision whether to arrange a public hearing:

- The seriousness of the complaint.
- The seriousness of the harm done.
- Whether a public hearing is needed to discover the truth.
- Whether there was a flaw in the investigation done by the police department, the measures proposed are inappropriate or inadequate, or the discipline authority's interpretation of the Code of Professional Conduct was incorrect.
- Whether a public hearing is necessary to restore or preserve public confidence in the complaint process and in the police.
- Whether the allegation is a "disciplinary default" under the Code of Professional Conduct Regulation.

Once the public hearing has been called, a retired justice from the Court of Appeal, the Supreme Court, or the Provincial Court of British Columbia is appointed as adjudicator for the purposes of that particular public hearing.

The Commissioner appoints Commission counsel who may call any witness who has relevant evidence to give, whether or not the witness was interviewed during the original investigation. Commission counsel may also introduce into evidence any record, including any record of the proceedings, concerning the complaint up to the date of the hearing.

The adjudicator must decide if the alleged disciplinary default has been proven on the civil standard of proof. The civil standard of proof is *"By a fair preponderance of the evidence"* (Black's Law Dictionary).

If a disciplinary default is proven, the adjudicator may impose a disciplinary or corrective measure, or may confirm, increase, or reduce the disciplinary or corrective measures already proposed by the disciplinary authority.

Once a decision has been reached at the public hearing, the only appeal available to that decision is to the Court of Appeal on questions of law.

The rules governing public hearings and Office of the Police Complaint Commissioner policy on ordering a public hearing can be found on the OPCC Web site at www.opcc.bc.ca.

Public Hearings in 2001

The Police Complaint Commissioner arranged four public hearings in 2001. Two public hearings were arranged pursuant to section 60(4) of the Act, the Commissioner determining that a hearing was necessary in the public interest. In each of the other two matters, respondent police officers invoked a statutory entitlement to a public hearing; those two hearings are now concluded.

One public hearing ordered in 2000 proceeded to conclusion, while another is set for hearing in 2002.

Another public hearing, arranged in 1999, was re-set for hearing dates in 2002, further to a decision from the British Columbia Court of Appeal. A subsequent decision by the Supreme Court of Canada resulted in the adjournment of that hearing to 2003.

A summary of all public hearings which were new, continuing or concluded in 2001 is set out below, although only limited details of ongoing hearings can be provided as the matters remain before the respective adjudicators.

Decisions rendered by adjudicators in concluded public hearings, and the schedule for upcoming public hearings, can be found on the OPCC Web site at www.opcc.bc.ca.

PH2001-04
Constable William Foster
Victoria Police Department

Constable Foster, a member of the Victoria Police Forensic Identification section, was assigned to obtain gunshot residue samples from the hands of a gunshot victim at the request of the Esquimalt Police Department, who were conducting an investigation into an apparent suicide attempt. Constable Foster initially submitted a report stating that he had taken gunshot residue samples. When queried over a month later by an investigator, Constable Foster replied that he had not taken the samples and that the report was wrong. On request, Constable Foster later submitted a second report stating that no samples were taken. Constable Foster later explained that samples had been taken, for practice, but

were not suitable for analysis. This complaint was internally generated by the Victoria Police Department.

After a discipline proceeding, the discipline authority found that Constable Foster had committed the disciplinary defaults of Neglect of Duty and Discreditable Conduct. The discipline authority imposed a one-day (12 hour) suspension without pay, and ordered Constable Foster to prepare and sign a letter of apology to the Esquimalt Police Department and to review the Victoria Police Department policy.

On 30 November 2001, Constable Foster advised the Office of the Police Complaint Commissioner he was invoking his statutory right to a public hearing. The Police Complaint Commissioner arranged the public hearing on December 6, 2001, naming the Honourable Peter J. Millward, QC, a retired justice of the Supreme Court of British Columbia, as adjudicator.

On April 5, 2002, in written reasons, the Adjudicator found that although Constable Foster's actions were lacking in appropriate attention to detail, they were not sufficient to constitute any disciplinary default, and the decision of the discipline authority was overturned.

PH2001-03
Constable Murray Phillips
Vancouver Police Department

The Police Complaint Commissioner received a record of complaint from the Vancouver Police Department dated January 21, 1999. As a result of the Department's investigation into allegations of improper conduct by Constable Murray Phillips, the Chief Constable issued a notice of discipline proceeding against Constable Phillips. An initial date for the discipline proceeding was set in 2000, then adjourned. The discipline proceeding was later set to proceed in late March 2001, at which time it was adjourned generally.

Pursuant to section 60(4) of the Act, the Commissioner determined that the public interest required a public hearing in relation to the allegations relating to Constable Phillips. Accordingly, on October 31, 2001, the Commissioner arranged a public hearing, and appointed the Honourable Charles C. Locke, QC, a retired justice of the British Columbia Court of Appeal, as adjudicator. The alleged disciplinary defaults are corrupt practice, discreditable conduct, neglect of duty and improper disclosure of information. The allegations span various periods from 1998 to 1999.

In March 2002, the Adjudicator adjourned the matter to June 2002 to further address issues raised regarding the mental fitness of the respondent to engage in the public hearing. The matter remains before the Adjudicator.

PH2001-02
Constable Michael Chan; and
Sergeant Ross Pascuzzo
Vancouver Police Department

On April 19, 2001, the Vancouver Police Department advised the Police Complaint Commissioner of possible allegations regarding the conduct of two constables. On May 1, 2001, the Police Complaint Commissioner ordered an investigation pursuant to section 55(3) of the Act. The matter was investigated by the Department. The discipline authority offered both respondents a pre-hearing conference, at which Constable Chan admitted to and accepted a two-day suspension for the disciplinary defaults of Discreditable Conduct and Neglect of Duty; and Sergeant Pascuzzo admitted to and accepted a written reprimand for the disciplinary default of Discreditable Conduct.

Pursuant to section 60(4) of the Act, the Commissioner determined that the public interest required a public hearing into the allegations against both respondents. Accordingly, on October 2, 2001, the Commissioner arranged a public hearing, and appointed the Honourable Kenneth Meredith, a retired justice of the Supreme Court of British Columbia, as adjudicator.

The public hearing is set to commence in 2002, and the matter remains before the Adjudicator.

PH2001-01
Sergeant Ron Broda
Saanich Police Department

On November 14, 2000, Constable Broda was required to attend court to give evidence for the prosecution in a traffic ticket case. He did not attend. The matter proceeded, to a conviction, without his evidence. In March 2001, the discipline authority found that Constable Broda had committed the disciplinary default of neglect of duty, and imposed a written reprimand.

On May 4, 2001, Constable Broda advised the Office of the Police Complaint Commissioner that he was invoking his statutory right to a public hearing. The Police Complaint Commissioner arranged the public hearing on May 29, 2001, naming the Honourable Jakob S. de Villiers, QC, a retired judge of the Provincial Court of British Columbia, as adjudicator.

On July 19, 2001, the date on which the public hearing was to commence, Constable Broda purported to withdraw his statutory request for a public hearing, and asked that the hearing be cancelled. The Adjudicator issued written reasons, concluding that he had no power to terminate the hearing in the circumstances, and that it must proceed. When the hearing resumed on November 14, 2001, this issue was revisited.

In written reasons dated November 19, 2001, the Adjudicator ruled that, once a public hearing is arranged pursuant to a respondent's request and an adjudicator is appointed, the hearing can be terminated with the consent of the Commissioner, provided the Adjudicator determines that it is in the public interest to terminate the hearing without a disposition. In the circumstances of this case, the Adjudicator determined that it was in the public interest to allow the request for a public hearing to be withdrawn. Accordingly, the Adjudicator terminated the public hearing and confirmed the findings and disposition of the discipline authority.

PH00-02
Sergeant Sherron Bayley;
Constable Jodyne Keller aka Dyck; and
Constable Elizabeth Miller
Vancouver Police Department

On March 4, 1998, six Vancouver Police Department officers were among the officers involved in the execution of a search warrant at an apartment on Commercial Drive. As a result of the police investigation, charges against three persons found in the premises proceeded to trial in Provincial Court in September 1999. At that trial, during a *voir dire*, evidence was adduced from various witnesses, including the six officers, regarding the manner in which the search warrant was executed. At the conclusion of the *voir dire*, counsel for the accused applied for a judicial stay of proceedings. On December 16, 1999, the trial judge directed a judicial stay of proceedings.

In January 2000 the Chief Constable of the Vancouver Police Department requested an external investigation by the Saanich Police Department. In December 2000, following a pre-hearing conference, two of the officers admitted to and accepted three-day suspensions for the disciplinary default of Discreditable Conduct; no findings were made against the other four officers.

Pursuant to section 60(4) of the Act, the Commissioner determined that the public interest required a public hearing. Accordingly, on December 12, 2000, the Commissioner arranged a public hearing, and appointed the Honourable Kenneth J. Scherling, a retired judge of the Provincial Court of British Columbia, as the adjudicator.

In April 2002, allegations against three of the six officers were withdrawn. The public hearing into the allegations against the remaining three respondents is to commence in June 2002, and the matter remains before the Adjudicator.

PH99-03
Inspector David Jones
Vancouver Police Department

On December 8, 1998, the Vancouver Police Department's Crowd Control Unit was deployed and engaged demonstrators outside the Hyatt Hotel during the course of a speaking engagement by the Prime Minister inside the hotel. Multiple complaints were received. The Police Complaint Commissioner ordered an investigation pursuant to section 55(3) of the Act. The investigation by the Vancouver Police Department concluded that no disciplinary or corrective measures be taken against any officers, and the discipline authority agreed with that recommendation on November 2, 1999. As of December 16, 1999, the Commissioner had received two requests for a public hearing.

Pursuant to section 60 of the Act, the Commissioner determined that the public interest required a public hearing into allegations against two officers. Accordingly, on December 16, 1999, the Commissioner arranged a public hearing, and appointed the Honourable Kenneth C. Murphy, QC, a retired justice of the Supreme Court of British Columbia, as adjudicator.

The public hearing was initially set to commence in June 2000, a date later adjourned to October 2000. In August 2000, the respondent officers successfully petitioned the Supreme Court of British Columbia for an order quashing the public hearing. That decision was appealed by the Police Complaint Commissioner to the British Columbia Court of Appeal.

On July 6, 2001, the Court of Appeal overturned the lower Court's ruling, thereby permitting the public hearing to proceed before the Adjudicator. The respondents subsequently sought leave to appeal from the Court of Appeal to the Supreme Court of Canada. In the meantime, new hearing dates were set, first for January 2002, and later for late May 2002. In early December 2002, the allegations against one of the respondents were withdrawn.

On March 14, 2002, the Supreme Court of Canada granted leave to appeal the decision of the Court of Appeal. The hearing of that appeal is tentatively scheduled for early 2003. The public hearing is adjourned pending a decision by the Supreme Court of Canada.

PH2000-01
Constable Graham Maddocks
Victoria Police Department

Constable Maddocks was off-duty and traveled to Greenland on a vacation in September 1999. Upon his return to Victoria, he took in a roll of photographic film for development. The lab technician developing the film was concerned about some of the photographs, and contacted the Victoria Police Department. The Department commenced an investigation into the matter. Shortly afterwards, Constable Maddocks was suspended with pay; he was later suspended without pay. The photographs were inappropriate depictions of an

apparently unconscious woman, with whom Constable Maddocks, while in Greenland, had engaged in an otherwise consensual relationship. In April 2000, following the investigation, the discipline authority provided Constable Maddocks and the Police Complaint Commissioner with a summary of the investigative findings, proposed disciplinary measures and notice of his intention to convene a discipline proceeding.

Prior to a discipline proceeding being convened by the discipline authority, the Commissioner determined that a public hearing would be in the public interest, pursuant to section 60(4). Accordingly, on April 20, 2000, the Commissioner ordered a public hearing, and appointed an adjudicator. In October 2000, a new adjudicator was appointed, namely, the Honourable Stuart S.M. Leggatt, a retired justice of the Supreme Court of British Columbia. The alleged disciplinary default was improper off-duty conduct in September 1999.

On May 4, 2001, the date on which the public hearing was to commence, Commission counsel applied to the Adjudicator to withdraw the notice of public hearing and to approve a disposition of the complaint as jointly suggested by Commission counsel and Constable Maddocks. The Adjudicator, on the bases set forth in his reasons, acceded to the application, and resolved the hearing as proposed. That proposal included the resignation of Constable Maddocks, effective December 31, 2000, with no accommodation for pension benefits, and the agreement by Constable Maddocks not to apply for reinstatement with the Department or any police agency, nor for any employment as an investigator.

Complaint Dispositions

The Police Complaint Commissioner is required by section 50 of the *Police Act* to regularly prepare reports of the complaint dispositions made or reached during the reporting period.

This 2001 Annual Report contains a sample of summaries of citizen complaints that resulted in disciplinary or corrective measures during the period 1 January to 31 December 2001. A complete list of complaint dispositions can be found on the OPCC Web site at www.opcc.bc.ca. Note that with the exception of those cases that proceed to public hearing, the disciplinary or corrective measures imposed reflect decisions made by individual police departments that employ the officer(s).

Possible disciplinary or corrective measures range from advice as to future conduct (managerial direction), verbal or written reprimands, suspensions for up to five days without pay, or dismissal from the police department.

Advice as to future conduct (managerial direction) is not a disciplinary measure under section 19 of the Code of Professional Conduct Regulation 205/98 of the *Police Act*. However, the Commissioner views it as a corrective measure for the following reasons: a chief constable has found that the circumstances of a complaint warrant that action be taken to correct the behaviour of the subject officer; a senior officer gives the subject officer advice as to future conduct; and the discipline authority records the complaint and the advice in the subject officer's personnel record. However, the advice is not recorded in the subject officer's Record of Discipline because it is not disciplinary action as defined in the Code. All other disciplinary measures are recorded in the subject officer's Record of Discipline.

The following are examples of some of the complaints that resulted in disciplinary or corrective measures in 2001.

File No. OPCC0992
Default: Abuse of Authority

Four officers responded to a report of a woman screaming and a violent fight at a residence. The complainant refused to allow them entry. Force was used to enter and a struggle ensued between one officer and the complainant. Three other police officers placed the complainant in handcuffs. The complainant alleged that the first officer kicked him in the face and back during a scuffle with the other police officers. The police officer denied "intentionally" kicking the complainant and stated that if his boot did come in contact with the complainant's face, it was done unintentionally. Following the scuffle there was a black smudge mark on the face of the complainant, consistent with a boot mark. The police officer determined that the complainant was still not adequately under

control and shoved him firmly against the wall. The complainant struck the wall with his forehead.

The discipline authority was satisfied that the officers were entitled to use reasonable force to enter the premises to ensure the safety of the victim of the assault. The discipline authority found that it could not be established that the constable applied excessive force to the person of the assailant.

The discipline authority found that **managerial direction** was an appropriate corrective measure for this incident.

File No. OPCC1027
Default: Discreditable Conduct

A neighboring police force advised that a constable was running CPIC searches on individuals who were suspects in incidents of theft at a department store and providing the CPIC information to the department store security guard. An investigation was ordered by the Police Complaint Commissioner and was characterized as public trust.

The constable was given **advice as to his future conduct**.

File No. OPCC0976
Default: Discreditable Conduct

The complainant and her husband were involved in a motor vehicle accident, witnessed by police. The respondent officer approached them. The complainant alleged that the officer was very rude in his interaction with them; that he insulted the complainant's husband, yelled at the complainant and ordered her to get back in the car and stop talking. The officer failed to take information from at least one person who was a witness to the accident, issued a ticket for running a yellow light when the complainant stated that the light was green, and that the officer was not in a position to know what colour the light was. The complainant lodged a complaint that was characterized as public trust.

The matter was investigated and it was determined that the officer's behavior in the incident was inappropriate and unprofessional. The ticket issued to the complainant's husband was withdrawn, the complainant received an apology from the department, and the officer in question received **managerial advice** as to his future conduct.

File No. OPCC0884
Default: Abuse of Authority

This is an allegation of two officers applying excessive force against the complainant. The complainant alleges that he was stopped by one officer and chased and pepper sprayed as

he walked home from a pub. The complainant ran to his home and into his partially open garage. He claims he was punched, hit several times on his body, taken to the ground, and then handcuffed. The complainant alleges that the other officer in the garage yelled to his mother and used profanity towards her.

The discipline authority found that the allegation of excessive force against the officers should be dismissed. The discipline authority found that **managerial direction** was an appropriate corrective measure for this incident, for the officer who used profanity in this incident.

File No. OPCC0880
Default: Improper Off-Duty Conduct

The allegations arose from the officer's involvement with the complainant and her ex-husband, who is related to the respondent officer. The complainant alleged that the officer repeatedly interfered with and overstepped his boundaries with respect to the complainant's children, including one incident in which the respondent had attended at the complainant's home with a police vehicle to assist her ex-husband in picking up the children. The complainant felt that this officer was using his position as a police officer to further his personal interests by helping a family member and she lodged an official complaint with the police department regarding this officer's behaviour. The complaint was characterized as public trust.

The discipline authority found that a default of improper off-duty conduct, characterized as internal discipline, was substantiated in relation to the officer's use of a police vehicle without permission. A **verbal reprimand** was issued.

File No. OPCC0804
Default: Corrupt Practice

The complaint was initiated as a result of information received by a senior officer and was characterized as public trust.

While on duty, the constable and his partner took a meal break and ate lunch at a local restaurant. On leaving the restaurant, the constable met and had a brief conversation with a woman in the restaurant. She alleged that the constable drove by her home the following day and that he began to make telephone calls to her of a social nature, although she had never given him her phone number. The woman alleges that she told the constable that she was not interested in dating anyone but she did not directly ask him to stop calling her. She told a friend about the situation and the friend then informed the Department. This woman did not want to lodge an official complaint and preferred that the matter be informally resolved.

CPIC records indicated that the constable had in fact run a search of this woman's license plate, although she was not involved in any police incidents. The investigation also showed that there were no police incidents in the vicinity

of this woman's home on the day that the constable had driven by. The chief constable imposed a **verbal reprimand.**

File No. OPCC0991
Defaults: Improper Disclosure of Information *and* Discreditable Conduct

An officer in the department had prepared a report to Crown counsel regarding an individual, and advised the respondent officer that it was the department's desire to have this arrest warrant executed as soon as possible. The respondent constable did not relay this message. The family of the accused were friends of the respondent constable and she advised them that there was an arrest warrant for their son. Acting on this information, the family's lawyer had the warrant vacated and the accused was therefore freed. Upon hearing that the arrest warrant had never been executed, a complaint was lodged internally with respect to the involvement of the respondent constable. The complaint was characterized as public trust.

The discipline authority concluded that although the constable had disclosed to the family that there would be an arrest warrant for their son, and this showed poor judgement, it did not constitute a disciplinary default and **managerial direction** was deemed appropriate.

With respect to the allegation of discreditable conduct, the constable's actions, including advising the family to get a lawyer, resulted in more serious consequences. The warrant process was slowed down and provided sufficient time for the accused's family to have the warrant vacated. The discipline authority imposed a **verbal reprimand**.

File No. OPCC0943
Default: Discreditable Conduct

The officer failed to attend for a scheduled special duty shift. When contacted by his supervisor, the officer stated that he had forgotten about it and that he had been up all night with his sick child. The officer had not called his supervisor to report that he would be absent from duty, as per the department orders. The complaint was initiated by the department and characterized as public trust.

The discipline authority was satisfied that there was sufficient evidence to support that the officer had committed the disciplinary default of discreditable conduct for failing to comply with a standing order of the department. The discipline authority gave the officer a **verbal reprimand**.

File No. OPCC0700
Default: Discreditable Conduct

The complainant alleged that police officers acted with racism and prejudice in their handling of incidents between the complainant and his next-door neighbours.

The complainant alleged that the respondent officer was anti-black and anti-American and that the respondent officer had "gone out of his way to please the neighbours" by conducting unsolicited investigations concerning the complainant. The complainant further alleged that the officer had acted in an unprofessional manner in making inappropriate comments concerning a court case involving the complainant and his neighbours, and accusing the complainant of being guilty of the offence, despite a finding of "not guilty" by the court. The complaint was characterized as public trust.

The investigation found that the respondent officer was a part of the community policing project that encompassed the area in which the complainant lived. As a result, the officer responded to several calls relating to the ongoing dispute between the complainant and his neighbours.

No evidence could be found to substantiate the allegation that the respondent officer was anti-black and anti-American. With respect to the complainant's allegation that the respondent officer made inappropriate comments regarding his court case, it was found that the officer did make these comments and in fact admitted to them. He was issued a **verbal reprimand**.

File No. OPCC1143
Default: Neglect of Duty

The officer failed to generate an investigation report when the complainant attended at the police department to lodge a complaint of domestic abuse she had suffered at the hands of her ex-husband. The complainant first called and spoke to the officer, then later dropped off a written statement. The officer did not commence an investigation, and several weeks later destroyed the statement. Another officer eventually investigated the matter, which resulted in a report to Crown counsel being submitted. Crown counsel determined that charges would not be laid.

The discipline authority imposed a **Verbal Reprimand**.

File No. OPCC1061
Default: Neglect of Duty

The complainant stated that he witnessed a hit-and-run collision but did not stop at the scene. Shortly after arriving home, a police officer attended and accused him of causing the hit-and-run accident. The complainant stated that the officer refused to listen to

anything he had to say, did not properly inspect the complainant's vehicle to see whether there was actual damage, but instead continued to insist that the complainant had caused the accident and that he should have stopped at the scene. A complaint was lodged and characterized as public trust.

An investigation found that the officer's investigation into the matter lacked the most basic investigative steps. Police have a duty to accurately report the details of a given incident, and that can only by done through a proper and complete investigation. The discipline authority issued a **verbal reprimand**.

File No. OPCC0683
Default: Improper Off-Duty Conduct

While off duty, two police officers visited a nightclub in a nearby city. One of the officers became intoxicated and was rude/abusive towards two of the nightclub staff, and was ejected from the nightclub. The intoxicated officer then became involved in an altercation and police were called. Upon seeing a marked police vehicle, both of the off-duty officers began to run and were stopped by police at gunpoint. The intoxicated officer's behaviour was uncooperative and was characterized by police as aggressive and showing a lack of self control. The complaint was initiated by the off-duty officers' chief constable, based on the information forwarded to him from the police department that dealt with the officers in this incident. The complaint was characterized as public trust and investigated accordingly.

It was determined that there was sufficient evidence that the first officer, the one who had become intoxicated, had committed the disciplinary default of improper off-duty conduct. There was not sufficient evidence to support the allegation with respect to the second officer. The discipline authority found that the first officer must participate in a recognized alcohol counselling program and imposed a **written reprimand.**

File No. OPCC1012
Default: Discreditable Conduct

The respondent officer, in the company of five other officers, attended a call to a disorderly party. A large number of youths present were under the influence of alcohol and five young males were consequently arrested. These males were placed in the rear of a police wagon to be transported to the cells. Before the police wagon left the scene, the five males became unruly, kicking the sides and back doors of the vehicle. One of the officers warned the youth and then administered pepper spray. Following this, the respondent officer was responsible for transporting the five males to the police cells. While en route, he administered another blast of pepper spray to the individuals. The officer did not report the deployment of his pepper spray, nor did he complete a "Use of Force" report. The

complaint was initiated by the department and was characterized as an internal discipline matter.

It was found that the constable had committed the default of discreditable conduct in that he failed to report the deployment of his pepper spray and he failed to prepare and submit a "Use of Force" report, as required by department policy. The constable was issued a **written reprimand**.

File No. OPCC0820
Default: Discreditable Conduct

The complaint relates to three separate police pursuits involving the same suspect driver and vehicle. The first pursuit was initiated when a driver stopped at a road check fled the scene. He was followed by two officers who concluded the chase a short time later, due to a perceived danger to the officers and the public.

The suspect vehicle was spotted a short time later and an officer attempted to stop the car. A short pursuit ensued until the pursuing officer advised other units he was shutting down the chase. No other units were involved in the second incident. Approximately a half hour later, the vehicle was seen a third time and this resulted in a third and final pursuit. The chase came to an abrupt end when the suspect collided with a concrete pillar in the covered parking area of a nearby shopping mall. The complaint, alleging several breaches of procedure relating to police pursuits, was initiated by the Department and characterized as public trust.

It was concluded that serious errors of judgement were committed by several of the officers on duty that evening and that policy and regulations were ignored or disregarded. The investigator concluded the first pursuit was marginally justified, but that the members involved were not in compliance with departmental policy.

The decision to initiate the second pursuit was an error in judgement that put the officer in non-compliance with the departmental pursuit policy.

The officers involved in the third pursuit were not in compliance with policy. The third and final pursuit could not be justified, especially given that the suspect had already shown his unwillingness to stop for officers and that the identity of the suspect was known to police.

Disciplinary action was imposed on four officers:

- The officer in charge that evening was given a **written reprimand** and **directed to complete training** in pursuit driving policy / procedures.
- The two officers involved in the third pursuit were given **verbal reprimands** and were **directed to complete training** in pursuit driving policy / procedures.
- One of the officers involved in the first pursuit was given **advice as to his future conduct**.

File No. OPCC1170
Default: Neglect of Duty

The complainant reported an assault and requested that an individual be charged. He stated he heard from the officer only once and was told at that time that the charges against the individual were being processed. The investigation showed that the officer had neglected his duty by failing to submit a report to Crown counsel regarding the assault of the complainant.

The discipline authority found that a disciplinary default had been proven and imposed a **verbal reprimand**.

File No. OPCC1155
Default: Neglect of Duty

The officer received a notice that she was required to attend court. The night before she was due to attend court, her staff sergeant reminded her of this commitment. The officer did not attend court. The case was dismissed as a result.

The discipline authority imposed a **written reprimand**.

File No. OPCC1268
Default: Neglect of Duty

The complainant telephoned the police department regarding some noise outside his residence made by skateboarders. The call was made to the police non-emergency line. The call came in during a shift change at the police department in question and the senior officer receiving the call informed the clerk/communicator that a report was not required and that he would handle the situation. Because of the busy time and the shift change, the call was never dealt with.

The discipline authority found the matter to be serious and imposed a **written reprimand**.

File No. OPCC1121
Default: Discreditable Conduct

The complaint arose out of a landlord and tenant dispute, wherein the landlord had given the tenants an illegal eviction notice. The landlord then cut off electricity to the tenants, entered their suite and threw their belongings outside. Police were called. Two constables attended, and then called a sergeant to attend as backup. The sergeant advised the tenants to leave the premises immediately, which they did. Two days later, the tenants went to Residential Tenancy offices where they were told that they should not have left the premises, and that it would now be more difficult for them to take action against the

landlord. They then complained that the sergeant had compelled them to abide by an unlawful eviction notice.

The complaint was resolved informally. The sergeant agreed to a **six-month reduction in rank** from acting sergeant to constable.

File No. OPCC0911
Default: Discreditable Conduct (x2)

Three officers responded to a citizen's tip that he had seen two teens spray-painting. When the officers arrived at the location they stopped two youths, detained them and searched them. One of the youths was found to be in possession of a number of spray can nozzles, a marker pen and a quantity of marijuana. It was alleged that the officer took hold of the marker pen that had been found and drew several marks on the inside and outside of the youth's jacket. This youth was arrested, escorted to the police station and released into the custody of his father a short time later. The following morning, the youth's father lodged a complaint with respect to the conduct of the respondent officer.

An investigation was conducted and the allegations against the officer were substantiated. In considering disciplinary actions, the Chief Constable took several factors into consideration, including the fact that the officer was acting in a supervisory role that evening with two junior officers and that the incident was extremely serious. A report to Crown counsel was completed regarding a proposed charge of Mischief (under $5,000) against the officer. The discipline authority imposed a **one-day suspension** and ordered the officer to issue a written apology to the complainant and to replace the complainant's jacket.

File No. OPCC1115
Default: Neglect of Duty

The constable was investigating a criminal harassment complaint. The suspect was identified and arrested. The suspect spent 25.5 hours in jail. It was later found that the arrested individual had the same name as the suspect, but was not the correct person. Two men of the same name were in the community and the police arrested the wrong one. The innocent individual later complained.

This case was dealt with as an internal discipline matter. The complainant was clear that he did not wish to officially proceed under the *Police Act*, but preferred that the matter be informally resolved. The City's legal department agreed to pay the man $5,000 in compensation. The constable wrote an apology to the individual involved and also apologized in person. The chief constable imposed a **two-day suspension**.

File Nos. OPCC1088/1188
Discreditable Conduct

The complainant reported that he had witnessed two police vehicles, an unmarked police car and a community policing van, racing through traffic. Both vehicles appeared to be travelling faster than routine traffic and appeared to be "playing around" as they were passing each other back and forth. The complainant observed the vehicles with emergency overhead lights on. He also observed some young girls in the police car. He felt that the driving was very unprofessional and lodged a complaint, which was characterized as public trust.

The two officers involved came from different departments.

The officer in the unmarked car had been returning from an assignment at a school in another district. He had two teenagers from the school in the vehicle with him. The officer driving the unmarked police car lied when asked to identify the driver of the policing van and later acknowledged his lie but refused to identify the other driver. The discipline authority found that the default of discreditable conduct had been proven. The officer was given a **two-day suspension** without pay.

The officer who was driving the police van, who was from another police department, received **advice as to future conduct** upon completion of the investigation done by that Department.

File No. OPCC0434
Default: Conduct Constituting an Offence (x3)

The complaint was initiated by the police department as a result of charges laid against the respondent officer. The officer was charged with (1) the assault of his wife, (2) the unsafe storage of firearms and ammunition, and later with (3) the assault of his girlfriend. The resulting court proceedings found him guilty of these charges. The police department had suspended him from the force during the court proceedings. Once the criminal proceedings were concluded, proceedings under the Police Act *were undertaken, characterizing the matter as public trust.*

The officer admitted to three defaults of conduct constituting an offence, under the *Police Act's* Code of Professional Conduct. The disciplinary measure imposed for all three of the defaults was **dismissal of the officer** from the police department.

Resignations / Retirements

In 2001, it was reported to the Police Complaint Commissioner that some police officers had resigned or retired prior to the conclusion of *Police Act* proceedings against them. Allegations against some of the officers were very serious and, in some cases, dismissal was recommended or being pursued by the discipline authority. These allegations included:

- Damaging police property
- Driving while under the influence (off-duty)
- Careless discharge of a weapon
- Deceit
- Improper CPIC and PIRS queries
- Sexual impropriety

Dismissal is the most punitive measure that can be imposed by a discipline authority and the resignation of a respondent officer may appear to be a satisfactory resolution to serious misconduct. However, the avoidance of public scrutiny may not be in the public interest.

Continued jurisdiction is particularly important where a police officer is hired by another policy agency or assumes another position wherein he or she will be empowered with police officer authority.

The *Police Act* does not expressly extend jurisdiction after the resignation or retirement of a police officer. The Police Complaint Commissioner has recommended legislative amendments to the Special Committee to Review the Police Complaint Process to address that issue.

Educational Opportunities

An integral part of the Police Complaint Commissioner's duties is an educational mandate. Section 52(2)(e) requires the Commissioner to provide information to the general public and section 50(2)(g) requires specific advice, information and assistance to complainants. To fulfill this mandate, the Commissioner assigned members of his staff to design, arrange, and deliver a general information Community Outreach program and specialized training sessions for police officers and board members.

Community Outreach Program

The goal of the Community Outreach Program is to inform and educate the public about police complaint procedures and the functions and duties of the Commissioner. In addition, OPCC staff receive and consider comments and suggestions regarding the complaint process. These activities are accomplished through the day-to-day direct interaction between OPCC staff and members of the community as well as formal meetings with community service agencies.

An objective of meeting with community service agencies is to provide information and guidance about how agency personnel can assist disadvantaged and marginalized persons who may be reluctant or unable to directly access a police department or the Commissioner.

During 2001, members of the OPCC staff conducted Community Outreach activities through direct interaction with members of the community and at the following locations on the Lower Mainland and Vancouver Island:

- Kiwassa Neighbourhood House
- BC Coalition of People with Disabilities
- Prostitution Alternative Counselling Education (PACE)
- The Native Education Centre
- Youth Advocacy Centre (two sessions)
- Victoria Women's Sexual Assault Centre
- Downtown Eastside Residents Services (DERA)
- Victoria Women's Transition House
- Justice Institute of BC (for MLA constituency assistants)
- Parliament Buildings (for MLA constituency assistants)
- Office of the Police Complaint Commissioner (for MLA constituency assistants)

Specialized Training Sessions

During 2001, the OPCC arranged and delivered the following specialized training sessions:

Calgary Police Department's Education, Assessment and Intervention Program, 3 April 2001

This seminar, presented by the Calgary Police Department's Professional Standards Inspector, was open to municipal police department internal investigators, human resources staff, police management, and police board members. Topics included:

- Early warning signs — a formula for the integration of core values into police conduct and a management strategy for personnel high-risk management program
- Ethics training
- Mentoring programs
- Alternate dispute training
- Recruit class profiling
- Tracking information
- Risk assessment
- Review authority
- Communications strategy

Internal Investigators Refresher Course, 30 May 2001

This course was intended as a refresher for internal investigators and was given by more experienced internal investigators and professional standards officers. It covered:

- A review of the *Police Act*
- Investigation processes, timelines and reporting mechanisms
- Designing and conducting complex investigations
- Internal discipline investigations
- Ethics in internal investigations

Professional Standards Symposium, 31 May 2001

This symposium covered:

- Legal update by OPCC counsel
- Labour law in internal investigations presented by an labour lawyer with a background in police discipline processes

- A presentation on value-based policing by a former U.S. police officer, now a college instructor

Information Sessions for MLAs, 13, 14, and 17 September 2001

The OPCC hosted three information sessions on the *Police Act* and police complaint process for new MLAs and their constituency assistants in Vancouver, New Westminster, and Victoria.

Workshop — Investigation of harassment in the workplace for police supervisors, professional standards officers, and police union agents, 22 October 2001

This workshop was part of a two-day training session held in Victoria. Topics covered included:

- Techniques of investigating harassment complaints
- What is the law?
- Liability issues
- Policy issues

Symposia of Interest to all Police Officers — Value-Based Policing, 22 Oct. 2001

Do police enforce morality or the law? This was part of a two-day training session held in Victoria. Topics covered included:

- Circumventing the law for moral purpose
- Racial profiling
- Departmental risk liability
- Trends

Symposia for Patrol Officers and Supervisors, 23 October 2001

This training session, also part of the two-day session in Victoria, consisted of panels of experts in each field discussing topics of current interest for police, including:

- Dealing with improper access and disclosure of personal information
- Dealing with persons with disabilities
- Dealing with police duties to persons in detention
- Dealing with street arrest, search, and seizure
- Police decision-making in domestic assault calls

Special Committee to Review the Police Complaint Process

The amended BC *Police Act*, which established the Office of the Police Complaint Commissioner, was proclaimed on 1 July 1998. Section 51.2 of the Act required that, within three years of the complaint provisions coming into force, a special committee of the Legislature would be convened to review the section and the work of the Police Complaint Commissioner.

Accordingly, a Special Committee was appointed and empowered to examine, inquire into, and make recommendations with respect to the police complaints process, in accordance with section 51.2 of the *Police Act* (RSBC 1996, c. 367) and in particular, without limiting the generality of the foregoing, to:

1. Review comprehensively Part 9 (Complaint Procedure) of the *Police Act* and the work of the Police Complaint Commissioner.
2. Solicit and consider written and oral submissions from any interested person or organization by any means the Committee considers appropriate.
3. Submit a report including any amendments to Part 9 that the Committee recommends to the Legislative Assembly arising out of the results of the Committee's inquiry within one year of this resolution being adopted by the House.

The Commissioner appeared before the Special Committee on 5 November 2001. He provided the Committee with an overview of the principles of civilian oversight and agencies in other jurisdictions, an outline of Part 9 of the BC *Police Act*, and discussion and recommendations with respect to the following issues:

- Power for police investigators to obtain an administrative search warrant.
- Power for the Commissioner to conduct an independent inquiry.
- Elimination of the term "frivolous and vexatious."
- Mediation and alternative dispute-resolution techniques.
- *Police Act* jurisdiction after resignation or retirement for police officer conduct.
- Discipline proceedings issues: streamlining the process.
- Power for the Commissioner to investigate conduct in the performance of any duty or function under the *Police Act*.
- Ensuring greater RCMP accountability to the Government of BC: facilitating the citizen complaint process.

- Facilitating the proactive role of the Office of the Police Complaint Commissioner.
- Eliminating the police "service record."
- Time delays affecting the effectiveness of Part 9.
- Reconciliation of section 59(2) and 61.1(1) re: respondent not permitted to give evidence at discipline proceedings versus adverse inference can be drawn for failure to testify at discipline proceedings.
- Reconciliation of sections 65.3(1) and 54.4(6) re: all complaints must be recorded versus complaints resolved by informal resolution must not be recorded. Should the service record of discipline include all complaints, whether the complaint is sustained or not.
- Introduce expungement into section 65.3.
- Reconciling the "party" sections in the Police Code of Conduct with section 21 of the Criminal Code of Canada.

The text of *The Evolving Civilian Oversight Model in British Columbia: A Review of Part 9 of the Police Act and Office of the Police Complaint Commissioner*, a discussion paper prepared and presented to the Special Committee to review the police complaint process in November 2001, is included as an Appendix to this report.

Standing Committee on Finance and Government Services

In August 2001, the provincial government created the Standing Committee on Finance and Government Services, giving it a mandate to oversee finance and administration for all seven of BC's officers of the Legislature. These include the Auditor General, the Chief Electoral Officer, the Child, Youth and Family Advocate, the Conflict of Interest Commissioner, the Ombudsman, the Information and Privacy Commissioner, and the Police Complaint Commissioner.

The Standing Committee's mandate is to review the annual reports, performance plans, budgets, and business plans of the statutory officers and make recommendations and reports to the Legislature. This mandate represents a change of process for statutory officers who previously submitted their budget proposals to Treasury Board, the cabinet committee that is responsible for budget and management matters.

The Commissioner appeared before the Standing Committee on 26 November 2001, presenting an overview of the Office of the Police Complaint Commissioner and a budget proposal for 2002–03 that represents a further change to the Office's budget process. The proposed change was based on an analysis of the needs and expenditure patterns of the Office's first three years. Those patterns included repeated requests for access to contingency funding to support the Office's operational development. "Spikes" in the office's financial requirements are associated with the necessity to defend against court actions initiated by police to challenge the Commissioner's statutory authority and the cost of public hearings. As a result of these unforeseeable and uncontrollable events, which are controlled by the actions of others, it is impossible to forecast office expenditures with any certainty.

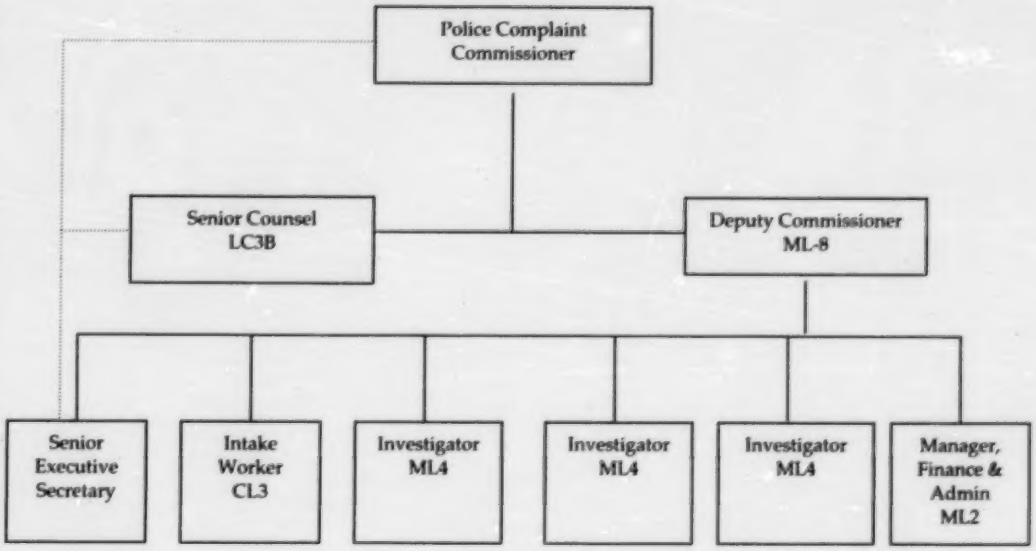
The proposal put forward by the Commissioner for fiscal year 2002–03 and subsequent years is that the Commissioner will submit an annual budget with respect to the basic operating costs of the agency, which budget will not include "best guesses" as to what the funding requirements might be for public hearings and legal challenges. On an "as needed" basis, the Commissioner will make additional requests for funding to support those expenditures.

Pursuant to a recommendation by the Standing Committee, the Commissioner is working with the other officers of the Legislature to examine the potential co-location with one or more other officers and the potential for achieving cost savings through a "shared-services" model for administration and support services.

The OPCC is developing annual Service and Performance plans that will reflect an analysis of the past three years' experience in implementing civilian oversight, a revised service delivery model (as influenced by budgetary restraints), the need for ongoing evaluation of the Office's success in fulfilling its statutory mandate, and the potential of a shift to a shared-services model in conjunction with the other officers of the Legislature.

APPENDICES

Organization Chart



As at December 31, 2001

Budget

Fiscal Year ending 31 March 2002

Number of staff		7
Vacancies		2
Salaries and benefits		$727,000
Operating expenditures		
Travel	$ 40,000	
Professional Services	182,500	
Telecommunications	43,000	
Office Expenses	63,000	
Vehicle Expenses	7,000	
Rent	96,000	
Total operating expenditures		$431,500
SUB-TOTAL		**1,158,500**
Total allocation		**$1,299,000**
SURPLUS		**$140,500**

Statistics

Comparison Statistics 1998 to 2001

	Complaints Received				Complaints Concluded			
	2001	**2000**	**1999**	**1998 ***	**2001**	**2000**	**1999**	**1998 ***
Abbotsford	21	12	34	7	17	38	13	6
Central Saanich	7	5	1	3	4	3	1	3
Delta	10	15	17	4	13	16	11	4
Esquimalt	17	21	12	4	16	17	12	2
Nelson	4	5	6	4	6	6	8	0
New Westminster	15	15	24	8	20	15	21	5
Oak Bay	5	11	4	0	11	5	3	0
Port Moody	3	4	2	1	2	3	3	0
Saanich	40	36	31	7	46	35	18	4
Stl'atl'imx Tribal Police	1	2	N/A	N/A	2	0	N/A	N/A
Vancouver	148	173	198	84	132	202	156	46
Victoria	73	73	87	20	73	77	53	18
West Vancouver	12	27	13	6	13	22	15	10
TOTAL	**356**	**399**	**429**	**148**	**355**	**439**	**314**	**98**

* The OPCC came into existence 1 July 1998. Figures for 1998 represent complaints opened or closed from 1 July to 31 December 1998 only.

** Effective 1 December 1999, the Stl'atl'imx Tribal Police became a self-administered police service in British Columbia. As a result, they are now subject to the provisions of Part 9 (Complaint Procedure) of the *Police Act* and fall under the mandate of the OPCC.

Files Opened 2001

	OPENED	PT	ID	SP	NL	NC	CP
Abbotsford	21	18	0	2	0	1	0
Central Saanich	7	6	0	0	0	0	1
Delta	10	6	1	0	0	3	0
Esquimalt	17	13	1	1	2	0	0
Nelson	4	3	0	1	0	0	0
New Westminster	15	10	1	1	3	0	0
Oak Bay	5	4	1	0	0	0	0
Port Moody	3	3	0	0	0	0	0
Saanich	40	37	2	1	0	0	0
Stl'atl'imx Tribal Police	1	1	0	0	0	0	0
Vancouver	148	128	1	4	5	9	1
Victoria	73	69	0	2	1	1	0
West Vancouver	12	8	1	3	0	0	0
TOTAL	356	306	8	15	11	14	2

PT	Public Trust	NL	Non-lodged
ID	Internal Discipline	NC	Not Characterized
SP	Service or Policy	CP	Compound

Note: Every complaint that is recorded on a Form 1 Record of Complaint is required by section 50.1(1) of the *Police Act* to be characterized as one of three types: public trust, service or policy, or internal discipline. Compound complaints are complaints that have both public trust and service or policy components. Non-lodged complaints are letters of complaint where the complainant has chosen not to formally proceed under the *Police Act* by filing a Form 1. Not Characterized complaints are complaints that have not yet been characterized.

Files Concluded 2001

	CLOSED	PT	ID	SP	NL	NC	CP
Abbotsford	17	16	0	1	0	0	0
Central Saanich	4	3	0	0	0	1	0
Delta	13	11	1	0	0	1	0
Esquimalt	16	13	0	1	1	1	0
Nelson	6	4	0	1	0	0	1
New Westminster	20	16	1	0	2	1	0
Oak Bay	11	7	1	3	0	0	0
Port Moody	2	2	0	0	0	0	0
Saanich	46	43	2	1	0	0	0
Stl'atl'imx Tribal Police	2	2	0	0	0	0	0
Vancouver	132	108	0	8	10	6	0
Victoria	73	68	1	1	2	1	0
West Vancouver	13	10	1	2	0	0	0
TOTAL	355	303	7	18	15	11	1

PT	Public Trust	NL	Non-lodged
ID	Internal Discipline	NC	Not Characterized
SP	Service or Policy	CP	Compound

Note: Every complaint that is recorded on a Form 1 Record of Complaint is required by section 50.1 (1) of the *Police Act* to be characterized as one of three types: public trust, service or policy, or internal discipline. Compound complaints are complaints that have both public trust and service or policy components. Non-lodged complaints are letters of complaint where the complainant has chosen not to formally proceed under the *Police Act* by filing a Form 1. Not Characterized complaints are complaints that were not characterized before they were concluded.

Disposition of Concluded Files

	A	W	IR	SD	NS	RC	PHNP	SUB	RES	DISC	Total
Abbotsford	0	1	1	5	8	0	0	0	0	2	17
Central Saanich	1	2	0	0	0	0	0	0	0	1	4
Delta	0	0	1	3	3	0	0	0	4	2	13
Esquimalt	0	1	2	10	1	0	0	0	0	2	16
Nelson	0	0	0	3	1	2	0	0	0	0	6
New Westminster	0	2	2	6	3	2	0	1	1	3	20
Oak Bay	0	2	0	5	2	1	0	0	1	0	11
Port Moody	0	0	1	1	0	0	0	0	0	0	2
Saanich	0	0	8	10	6	1	0	2	0	19	46
Stl'atl'imx Tribal Police	0	0	0	1	0	0	0	0	1	0	2
Vancouver	1	4	8	50	46	13	0	3	0	7	132
Victoria	1	3	27	33	2	1	0	0	2	4	73
West Vancouver	0	0	1	5	3	2	0	0	0	2	13
Total dispositions	**3**	**15**	**51**	**132**	**75**	**22**	**0**	**6**	**9**	**42**	**355**
Percentage of total	**1%**	**4%**	**14%**	**37%**	**21%**	**6%**	**0%**	**2%**	**3%**	**12%**	**100%**

A Abandoned.

W Withdrawn.

IR Informally resolved.

NS Not substantiated.

SD Summarily dismissed. The discipline authority can dismiss complaints for 3 reasons: there is no evidence that further investigation would reveal evidence of a disciplinary default; the incident occurred more than 12 months ago; or the complaint is frivolous and vexatious.

RC Reviewed and closed. For service and policy complaints and for non-lodged complaints. Upon receipt of the final response from the police board or the police department, the OPCC reviews the file and closes it.

PHNP Public hearing non-participant. Files where there were multiple complaints about one incident, a public hearing was ordered, but not all complainants chose to participate (the non-participants).

SUB Substantiated. The complaint was substantiated, but did not warrant disciplinary or corrective measures.

RES Resignation/retirement of officer.

DISC Disciplinary or corrective measures imposed.

Report to the Special Committee

The following is the text of *The Evolving Civilian Oversight Model in British Columbia: A Review of Part 9 of the Police Act and Office of the Police Complaint Commissioner*, a discussion paper prepared and presented to the Special Committee to review the police complaint process in November 2001.

Context for Review

Police Act[1], Section 51.1(1): The Police Complaint Commissioner must report annually to the Speaker of the Legislative Assembly on the work of the Office of the Police Complaint Commissioner.

Police Act, section 51.2(1): A special committee of the Legislative Assembly must begin a comprehensive review of this Part and the work of the Police Complaint Commissioner within three years after this Part comes into force and must submit to the Legislative Assembly, within one year after beginning the review, a report that includes any amendments to this Part that the committee recommends.

Police Act, section 51.2(2): As part of the review process contemplated by subsection (1), the committee must solicit and consider written and oral input from any interested person or organization.

Jurisdictional challenges[2] have made this review somewhat premature. Recent decisions from the BC Court of Appeal and the BC Supreme Court have provided strong judicial support for the legislated model of civilian oversight. BC's civilian oversight model also received positive reference in the newly released APEC Report.

It has been suggested that the public hearing process is too expensive; the Abbotsford public hearing being cited in support of this suggestion. However, if examined, the high costs of the Abbotsford public hearing were legal costs. Each police officer had a lawyer even though three of them did not have conflicting responses to the allegations. Even though a written submission by commission counsel said there was no support for the allegations against three of them, one counsel still wrote an 85-page written submission. The high costs in other files are also legal costs.

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[1] BC *Police Act*, RSBC 1996. c. 367.

[2] *Brown v. Police Complaint Commissioner et al.* [2001] BCSC 1115 (August 1, 2001); *Doern and Jones v. Police Complaint Commissioner* [2001] BCCA 446 (July 6, 2001).

In her written decision in *Brown v. Police Complaint Commissioner et al.*, Madam Justice Kirkpatrick bluntly questioned who is gaining from these legal challenges and stated:

> "the procedure in the Act should be followed to its end before any application for judicial review is entertained. Premature applications for judicial review are a drain of the resources that tribunals such as the one set up under this Act are designed to save."

Following the legislative model will help to achieve that. One public hearing in Vancouver lasted three days. The allegations were not substantiated. Another public hearing in Victoria lasted one day and the respondent police officer resigned.

Like other forms of oversight legislation, Part 9 has faced judicial challenges in the three years since it was created. Because those challenges have resulted in such strong judicial endorsement for the model, it is too soon to make an informed determination about substantive changes to the legislation. Modest changes will be best; changes that clarify or enhance what currently exists, with a provision for further review in another two or three years.

Within the context of civilian oversight of police in British Columbia, additional discussion includes expanded responsibility in the areas of

- Province-wide policing issue reviews, with reports filed in the Legislature, and
- Providing better accountability for the RCMP.

Background

The BC *Police Act* establishes an oversight model which responds to complaints and, of equal importance, provides that the Police Complaint Commissioner take a proactive/preventative approach to addressing police conduct and the relationship between the police and the community. This is consistent with the approach recommended by many experts (including Justice W. Oppal in his report, *Closing the Gap: Policing and the Community*[3]. This approach is reflected in police oversight legislation in various Canadian and international jurisdictions.

In the three years since the Office of the Police Complaint Commissioner was established, the Office (while not ignoring its reactive role) has focused on its proactive role which is designed to help prevent incidents between

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[3] *Closing the Gap: Policing and the Community*, Final Report of the Oppal Inquiry into Policing in British Columbia, 1994.

police and complainants and, where incidents do occur, to improve the police complaint process.

Details of the activities of the Police Complaint Commissioner have been presented in Annual Reports to the Legislature. These include:

- establishing a Professional Standards Advisory Committee to create Guidelines and Practice Directives (posted on the Office of the Police Commissioner's Web site at www.opcc.bc.ca);
- providing educational opportunities for police officers and management;
- presentations to promote information exchanged and public education;
- analysis of complaint files to identify areas of research;
- initiatives touching on ethical integrity; and
- responding to court challenges that test the oversight system and jurisdiction of the Police Complaint Commissioner.

The following summary of statistics for the period July 1, 1998 to December 31, 2000, reflects the activities of Police Complaint Commissioner in responding to complaints:

Complaints received:	976
Complaints concluded:	955
Public hearings ordered:	6

The purpose of this paper is to assist the special committee of the Legislative Assembly in reviewing Part 9 and the work of the Police Complaint Commissioner by focusing discussion on amendments to Part 9 that will better facilitate British Columbia's objectives for civilian oversight of law enforcement.

Discussion Item 1: Power for police investigators to obtain an administrative search warrant.

There are two ways to obtain evidence in a *Police Act* (Part 9) investigation:

1. The Police Complaint Commissioner can request access to records pursuant to Section 50(5) of the *Police Act*, with no enforcement powers.
2. Internal investigators may characterize the investigation as a criminal investigation in order to obtain a search warrant.

There must be a way for police to obtain an administrative warrant from a Justice of the Peace to gather evidence.

The 1994 Oppal Report[4] made a series of recommendations designed to ensure the independence and authority of a police complaint commissioner, in support of an independent and accessible civilian oversight process.

The 1998 *Police Act* gives the Commissioner the statutory duty to oversee the handling of complaints against police. The Act confers specific statutory responsibilities and powers in support of the mandate.

The section 50(5) requirement that persons give the Commissioner access to records upon the Commissioner's request has proven inadequate in certain cases.

Granting police investigators statutory authority to obtain an administrative search warrant, if necessary, would ensure the access to books, correspondence, documents and physical or electronic records. The warrant would also ensure the integrity of searches.

The power to obtain a search warrant will strengthen, and will be seen to strengthen, the authority of Part 9 and the independence of the Commissioner to ensure that complaint investigations are thorough, fair and balanced. An administrative search warrant establishes a standard and process consistent with the objectives and integrity of the office of the Police Complaint Commissioner.

The authority to obtain a search warrant or a court order for search and seizure is consistent with the power given to other BC agencies that have statutory authority to oversee complaints about agencies and/or their employees, or professionals regarded as occupying positions of public trust. Examples include:

- BC Human Rights Council[5]
- Employment Standards Branch[6]
- Security Programs Division[7]
- Workers Compensation Board[8]
- Association of Professional Engineers and Geoscientists[9]
- Law Society of British Columbia[10]
- College of Physicians and Surgeons[11]

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[4] *Closing the Gap: Policing and the Community*, Final Report of the Oppal Inquiry into Policing in British Columbia, 1994.
[5] Human Rights Code, RSBC 1996, c. 210.
[6] *Employment Standards Act*, RSBC 1996, c. 113.
[7] *Private Investigators and Security Agencies Act*, RSBC 1996, c. 374.
[8] *Workers Compensation Act*, RSBC 1996, c. 492.
[9] *Engineers and Geoscientists Act*, RSBC 1996, c. 116.
[10] *Legal Profession Act*, RSBC 1996, c. 9.

- The College of Psychologists of BC[12]

Discussion Item 2: Power for the Commissioner to conduct an independent inquiry.

Under sections 55, 55.1 and 64(7), the Police Complaint Commissioner may order a police investigation, or further investigation, into public trust complaints.

The Police Complaint Commissioner also has limited authority to investigate public trust complaints under section 50 (4), which empowers the Police Complaint Commissioner to receive and obtain information "in the manner the police complaint commissioner considers appropriate." This includes interviewing and taking statements from the discipline authority, the person making the complaint and the respondent.

Recently, the Police Complaint Commissioner retained Larry Campbell, the former Chief Coroner for British Columbia, to prepare a report as a result of media-raised issues regarding Vancouver Police Department's "Growbusters Initiative," to assist him in determining whether a formal investigation should be ordered pursuant to section 55(3) of the *Police Act*. The public interest is generally accepted as having been served by addressing an issue that may have given rise to complaints with their attendant time delays and costs.

BC's Ombudsman has similar, though more extensive, powers of investigation including authority to enter premises, inspect, conduct private interviews, and summons and examine people under oath. Giving similar powers to the Police Complaint Commissioner for the purpose of conducting inquiries into matters that meet a public interest test would be consistent with the Oppal Report recommendations.

The Chair of the RCMP Public Complaints Commission has the power being recommended for BC's Police Complaint Commissioner. The *RCMP Act*[13] empowers the Chair to conduct independent investigations and to file findings and recommendations directly with the minister who oversees the RCMP. There need not be an initiating public complaint. Recently, the Chair used this power to investigate an incident in New Brunswick involving the RCMP. The Report was tabled and the Commissioner of the RCMP has responded with policy changes and reassignment of some members.

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[11] *Medical Practitioners Act*, RSBC 1996, c. 285

[12] *Psychologists Act*, RSBC 1996, c. 381.

[13] *Royal Canadian Mounted Police Act*, RSC, c. R-9, section 45.43

BC's extensive policing contracts with the RCMP mean that the RCMP Chair could exercise this power to conduct an investigation or hearing into provincial or municipal policing in British Columbia. Granting BC's Complaint Commissioner the same power with respect to municipal police departments would increase the consistency of civilian oversight in all BC police jurisdictions and could avoid duplication where issues impact both RCMP and independent municipal policing jurisdictions.

Vesting the Commissioner with extensive power to inquire and report will help achieve the public interest in an efficient, effective, transparent, and fiscally prudent manner.

Extended powers of inquiry would facilitate the Police Complaint Commissioner addressing substantive public interest issues proactively, or in circumstances where the time limits prescribed by the *Police Act* might otherwise defeat the public interest, without the need to identify respondents or hold a public hearing. The Police Complaint Commissioner could refer the findings of inquiries to the discipline authority, police board, or legislature, as deemed appropriate and make reports available to the public.

The Oppal Report examined various models for civilian oversight of police and identified important characteristics, including:

- complete independence from police authorities;
- the power to initiate complaints;
- the use of non-police investigators in some circumstances;
- powers to carry out investigations independently of the police; and
- the power to scrutinize police decisions on investigations.

Circumstances when an inquiry by the Commissioner may be more appropriate than an internal investigation by police include:

- cases where the actions complained of are the subject of similar allegations in respect of police officers in other police departments; and
- cases involving one or more police agencies where the public perception is that police conduct or policy requires an arm's length examination.

While allowing police discipline authorities to investigate complaints is an important feature of the BC police complaint process, empowering the Commissioner to conduct an independent investigation will strengthen the role of the Commission as an impartial and independent oversight body. This is particularly important in circumstances where a complainant or the Commissioner is not satisfied with the outcome of an initial police investigation.

Vesting the Commissioner with this authority would also ensure an independent examination of police conduct or policy in circumstances where:

- the complaint involves officers from more than one police department;
- the complaint is about systemic processes, policies, or practices;
- the complaint relates to provincial standards that are adopted and applied by all municipal police departments;
- the matter is a serious public interest issue affecting more than one, or all, municipal police departments;
- there is no complainant willing or able to complain about the matter;
- the Director of Police Services lacks the necessary independence from government required to address issues about provincial policy or standards; or
- the matter is referred by the Attorney General or the Solicitor General (e.g., The Nova Scotia reference to the Nova Scotia Police Commission).

Discussion Item 3: Elimination of the phrase "frivolous and vexatious."

The Office of the Public Complaint Commissioner cannot dismiss complaints at first instance, thereby causing unnecessary bureaucratic work and/or investigations. The Quebec Ethics Commissioner and the Newfoundland Complaints Commissioner have the power to dismiss a complaint.

Section 54 of the *Police Act* sets out the grounds which permit a discipline authority to summarily dismiss a public trust complaint.

The terminology "frivolous or vexatious" was examined in the Oppal Report. While both citizens and police administrators stated that the words convey an unduly negative attitude toward complaints, the words were retained because they have well-established judicial interpretation. Unfortunately, these words tend to provoke complainants to proceed further with the complaint.

Where a complaint has been summarily dismissed by the discipline authority, the Commissioner is currently limited to:

- examining the decision and the reasons for summary dismissal, and
- either confirming the decision or ordering an investigation into the complaint.

These limitations may serve to further inflame the complainant or result in the unnecessary conduct and costs of an investigation.

Discussion Item 4: Mediation and alternative dispute resolution techniques.

Many types of informal resolution are being used, but not formal mediation involving third parties. Quebec legislation empowers the Ethics Commissioner to order formal mediation. In Quebec, these cases have resulted in a 90% success rate.

Many citizens commented to the Oppal Inquiry that a simple apology and explanation from the officer involved would have been sufficient to resolve a complaint.

Although the *Police Act* does provide for alternative dispute resolution strategies, facilitated by the Commissioner, they are not mandatory.

To encourage and facilitate the use of these strategies, the Commissioner has issued a Practice Directive on Mediation. The Commissioner has provided additional information describing the ethical principles and factors that must be considered in determining whether or not informal resolution is more appropriate than the more formal complaint process.[14]

Quebec is unique in Canada in its approach to police complaints. The Quebec Commissioner has the discretion to direct a complaint for conciliation and, unless it is contrary to the public interest as determined by the Commissioner, every complaint proceeds to conciliation.

The lack of reference to alternative dispute resolution techniques in other provincial police legislation may be a simple reflection of the dates of the legislation. Across Canada dates for police related statutes range from 1977 to 1990.[15]

Within BC, mandatory mediation is increasingly recognized as an alternative to formal and more costly court procedures. Mediation is a well-established tool for resolving Small Claims, family law matters, and civil actions relating to motor vehicle personal injury claims and is seeing expanded use in civil actions in BC Supreme Court.

In announcing the expansion of mediation in civil court disputes, the then Attorney General stated: "Mediation can be faster, less costly and less confrontational than a trial."[16] It may be assumed that mediation could

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[14] *The Informal Resolution of Complaints: Ethical Considerations*, Eike-Henner Kluge, November 1999.

[15] BC 1998, Alberta 1988, Saskatchewan 1990, Manitoba 1985, Ontario 1990, Quebec 1990, New Brunswick 1977, Nova Scotia 1989, Prince Edward Island - no statute, Newfoundland unknown.

[16] Ministry of Attorney General media release, January 16, 2001.

provide the same benefits and satisfactory results in resolving complaints about police.

Few BC tribunals have the authority to compel parties to participate in mediation. Two examples relate to landlord and tenant[17] issues and disputes between school districts.[18]

Mediation provides a less confrontational forum for resolving disputes and is consistent with the philosophy of community policing. In light of the Oppal Report finding that many complaints could be resolved on the basis of an explanation and apology, granting the Commissioner the power to order mediation in appropriate circumstances may go a long way toward resolving police complaints and improving relations between police and the community.

In order for mediation or alternative dispute resolution techniques to succeed, the Part 9 should provide that complainants and respondents can be compelled to participate in these processes.

Discussion Item 5: *Police Act* jurisdiction after resignation or retirement for police officer conduct.

The use of sick leave, long-term disability and retirement to avoid responsibility for conduct is addressed by Quebec in a statute which maintains control and hence accountability.

Continued jurisdiction is particularly important where a police officer is hired by another police agency or assumes another position wherein he or she will be empowered with peace officer authority.

The need for public accountability for police cannot be overstated. It was the dominant theme in the Oppal Inquiry.[19]

There are, within BC, examples where other professional oversight bodies retain the authority to investigate complaints about former members of specific professions. These include: lawyers, physicians and psychologists.

Policing is recognized as having a substantially higher requirement for public oversight than other professionals. This is based on the extraordinary powers exercised by police. It is therefore arguable that it is in the public interest to extend, beyond resignation or retirement, the jurisdiction of the *Police Act* to investigate complaints about conduct while exercising the powers of a police officer.

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[17] *Residential Tenancy Act*, RSBC 1996, c. 406.
[18] *School Act*, RSBC 1996, c. 412.
[19] *Closing the Gap: Policing and the Community*, Final Report of the Oppal Inquiry into Policing in British Columbia, 1994.

This is increasingly important because former police officers frequently undertake post-retirement or post-resignation employment in other positions of trust where they continue to exercise the authority of a peace officer. Examples include, police officers who leave one police department to work for another, special provincial constables and designated police officers who are also appointed under the *Police Act*, or investigative or decision-making positions empowered by a variety of legislation.

In the Manitoba judgment of *Blair v. Soltys*,[20] jurisdiction continued over a police officer who resigned from one department and subsequently worked for another. The court determined that police officers hold a unique position in society due to the special powers they are entitled to in order to carry out their duty. Thus, it is necessary to hold police officers accountable for their actions when it affects the public interest. It would be contrary to the basic purpose of the oversight legislation to find that jurisdiction is lost when a police officer quits his job. Emphasizing that the purpose of the Manitoba *Law Enforcement Review Act* is more than just a disciplinary statute, the judge stated that the Act had a much "broader public purpose" and was "designed to promote both respect for the police and respect for the individual"(para 7).

Discussion Item 6: Discipline proceedings issues: streamlining the process.

"Discipline proceedings" add to the complexity, cost, and delay (and sometimes frustration) of the Part 9 complaint process without any certainty of outcome.

Discipline proceedings follow the investigation, an initial decision by the disciplinary authority about whether the investigation report is sufficient to warrant disciplinary or corrective measures, and a prehearing conference which may be offered to determine whether a respondent is willing to admit a default and, if so, what measures will be accepted.

During disciplinary proceedings, a police officer has the opportunity to challenge the investigation but there is no opportunity for input from the complainant. The outcome of this unbalanced proceeding is a finding that the officer was or was not at fault and proposed disciplinary or corrective measures. If either the complainant or respondent is aggrieved of the outcome and proposed measures, they can pursue a public hearing during which an adjudicator considers the outcome with the benefit of input from the complainant and renewed challenged by the respondent.

Although preceded by a series of investigative and decision-making steps, discipline proceedings do not conclude the complaint process. Discipline

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[20] *Blair v. Soltys*, [1999] M.J. No. 470 (Man.Q.B.).

proceedings provide no certainty as to the outcome of a complaint for either the respondent or the complainant, and may not satisfy the public interest. Once the discipline proceedings are completed, the complainant may request a public hearing, the respondent may exercise a statutory right to a public hearing, or the Police Complaint Commissioner may determine the need for a public hearing regardless of whether one has been requested.

Discipline proceedings are a restricted form of within-police-department hearing to determine whether the alleged default has been proved and identify appropriate disciplinary or corrective measures. Other than the respondent officer, who is not compellable, the only witness allowed is the investigating officer, and the only report considered is the final investigation report. Given these restrictions, disciplinary hearings may not focus on the issues underlying the complaint.

Discipline proceedings do not provide a role or an opportunity for input for either the complainant or the Police Complaint Commissioner. (The Police Complaint Commissioner or his delegate may attend the proceedings but is not permitted to participate.)

The complainant, who is not permitted to attend discipline proceedings is only advised of the outcome after the fact. If dissatisfied with either the finding of fault or the consequences to the police officer, the complainant's only recourse is to request that the Police Complaint Commissioner order a public hearing.

Although the respondent police officer is compelled to attend discipline proceedings; he or she is not entitled to call witnesses or submit reports. There is no recourse for the respondent based on disagreement with the finding of fault. The respondent's only recourse is on the basis of disagreement with the proposed disciplinary or corrective measures and, at that, only when those measures are more severe than a verbal reprimand.

After the discipline proceedings, the Police Complaint Commissioner reviews the record of the proceedings. Regardless of whether a complainant or respondent requests a public hearing, the Police Complaint Commissioner may arrange a public hearing if he considers there are grounds to believe that it is necessary in the public interest.

The resolution of complaints might be more expeditious and cost-effective, and therefore better serve the public interest if the complaint process were streamlined to eliminate repetitive decision-making. See also Discussion Item 2: Power for the Commissioner to conduct an independent inquiry.

Discussion Item 7: Power for the Commissioner to investigate conduct in the performance of any duty or function under the *Police Act*.

Police officers are not the only people appointed under the *Police Act* for the purpose of law enforcement and/or for the exercise extraordinary powers against citizens.

Of these, the groups whose powers are identical to, or closely approximate, police powers are special provincial constables, designated police officers, and designated law enforcement officers. While it may seem logical to simply include these officers within the jurisdiction of Part 9, BC's past experience is that applying procedures that are designed specifically for police agencies to non-police agencies does not work, for a variety of reasons relating to labour relations, contractual arrangements, and a lack of expertise for conducting the internal processes prescribed by Part 9.

Currently, work is underway to examine the potential for applying Part 9, either in whole or with modifications, to these other police and law enforcement officers. The increasing number of agencies and officers that are outside public policing departments reflects a devolution of policing responsibilities to government regulatory agencies and corporate bodies, such as Translink security and ICBC. It would be prudent to examine the role of civilian oversight in ensuring the integrity of these law enforcement agencies.

Discussion Item 8: Ensuring greater RCMP accountability to the government of BC: Facilitating the citizen complaint process.

The Oppal Report examined the issue of RCMP accountability to the province for the conduct of its officers who provide police services to BC citizens and are paid by BC tax dollars (provincial and/or municipal). Oppal noted that the RCMP generally avoids this accountability by relying on Supreme Court of Canada cases that generally state that provinces have no authority to legislate upon matters that may affect the internal operation and policies of the RCMP. Oppal concluded it "is extremely doubtful that complaints are properly classed as internal."

Oppal further stated: "It is clearly unacceptable that citizens of this province are subject to two different standards of accountability and processes for investigation and disposition of complaints about police. Clearly there should be one process for complaints against all police officers."

While the RCMP have not been receptive to participating in such a common process for complaints against police officers, the Province could achieve greater accountability by insisting on compliance with Article 4.2(e) of The Provincial Police Service Agreement (April 1, 1992). That agreement

provides that the Commanding Officer shall "provide the Minister each month with the particulars of any new or outstanding complaints made against the Service by any member of the public to the Force; the form and substance of the particulars shall be agreed upon by the Commanding Officer and the Minister."

While compliance with this agreement won't achieve the goal of "one process for all BC police" it will allow for proper and consistent reporting and analysis of complaints about police conduct on a province-wide basis.

In addition, without any legislation, the province could facilitate the opportunity for complainants to file complaints with a receptive body. The OPCC, working with community victim services, can ensure that there are locations throughout the province where complainants can speak with provincial employees who will ensure that their complaints are clarified and forwarded to the appropriate oversight body.

The OPCC, in coordination with the RCMP Public Complaints Office, can provide appropriate training to those community services workers.

Discussion Item 9: Facilitating the proactive role of the Office of the Police Complaint Commissioner.

The traditional, reactive "deterrence" model which holds an individual police officer responsible for his or her actions has quasijudicial features and focuses exclusively on the "rotten apple" approach to police misconduct.

In this model there are basically two stages in the handling of a complaint: investigation and discipline. Traditionally police did it all. With the advent of external oversight bodies, civilians have become involved in three ways: reviewing the police investigation; supervising the police investigation and telling police what to do; or conducting an independent investigation of the complaint.

The development of civilian oversight must explore in greater depth, and in public, what contributes to low standards of police behaviour. The Commissioner does not advocate the adoption of an either/or approach. This examination is needed to help change policing organizations and the police culture.

If the problem of police conduct is to be addressed, a combined deterrence-proactive approach is needed. As long as the emphasis is on punishing individual conduct after the event, to the virtual exclusion of looking at the policies which are supposed to act as a guide before and during an event, old problems will remain. The change of emphasis provides a difficult challenge for police organizations which cling to the paramilitary structure

wherein rank demands obedience even when an order and/or a policy is inappropriate or just plain wrong.

It is important that the legislative framework for the Office of the Police Complaint Commissioner does not concentrate only on punishing "rotten apples." Legislation that supports a proactive approach to addressing police conduct by the oversight body will assist with required attitudinal change within the police.

Proactive steps taken by BC's Police Complaint Commissioner that are designed to help prevent incidents between police and complainants, and where incidents do occur, to improve the police complaint process include:

- involving police in the creation of Guidelines and Practice Directives to ensure fairness and equity in the processing of complaints;
- retaining an ethicist to provide opinions on issues of police conduct;
- providing educational opportunities for police officers and management; and
- creating a Web site that provides information to both police and the community.

The Police Complaint Commissioner will be taking further steps to involve police managers, union representatives, and various experts in police policy and training in identifying proactive initiatives and strategies.

Discussion Item 10: Eliminating the police "service record."

The service record stems from the military model. Under the old Part 9, police could have items expunged from the service record. See discussion paper posted on OPCC Web site.

Discussion Item 11: Time delays affecting the effectiveness of Part 9.

Time delays occasioned by reference to Crown counsel and the time it takes for them to consider charges impacts the effectiveness of the process by:

- exhausting the time limits for prosecuting summary conviction offences (e.g., simple assault); and
- creating extensive delay where more serious offences are considered. This time may take more than a year, which creates stress and frustration for complainants and respondents.

Police do not have the necessary objectivity to assess recommended charges against police officers. As a result, police do not include a recommendation for charges when referring matters to Crown counsel. This further contributes to the delay in Crown reviews.

Part 9, section 50(3)(g) empowers the Police Complaint Commissioner to refer complaints to Crown for possible criminal prosecution. Delays may be reduced if the PCC were to review complaints and determine whether they are appropriately referred to Crown and make recommendations for charges.

Additional delays have been occasioned by intermediate Court challenges (e.g., *Doern & Jones v. Police Complaint Commissioner*, 2001 BCCA No. 446; *Brown v Police Complaint Commissioner et al* (2001 BCSC No. 1115). Although the results have been strong judicial support for the complaint process, these delays nonetheless impact on the efficiency of the process.

Discussion Item 12: Reconcile sections 59(2) and 61.1(1) regarding respondent not permitted to give evidence at discipline proceeding versus adverse inference can be drawn for failure to testify at discipline proceeding.

Discussion Item 13: Reconcile sections 65.3(1), 54.4(6) regarding all complaints must be recorded versus complaints resolved by informal resolution must not be recorded. Should the service record of discipline record all complaints, whether the complaint is sustained or not?

Discussion Item 14: Introduce expungement into section 65.3.

Discussion Item 15: Reconciling the "party" sections with section 21 of the Criminal Code of Canada.

Conclusion

In examining the question of police accountability, Justice Oppal observed that, because of the unique combination of attributes of police work, it is now generally accepted that the administration and redress of complaints requires independent public scrutiny. Police are distinguishable from other professions because:

- policing tends to occur in volatile circumstances that are not viewed by the public;
- police have special powers to use force in detaining and arresting people; and
- police work requires an *esprit de corps*, which may result in officers closing ranks against a complainant.

Civilian oversight of police is the adopted model in Canada and in an increasing number of international jurisdictions. Civilian oversight bodies are responsible for effectively addressing and balancing the need to protect

the public from police misconduct and, at the same time, protect police officers from wrongful allegations and other forms of harassment. The debate about external, independent civilian oversight bodies has focused on the reactive aspect of the complaints process. The crucially important proactive dimension is only starting to be addressed as is the potential for resolving complaints through mediation and other forms of alternative dispute resolution.

In practice, the proactive strategies are limited to making recommendations on administrative and procedural issues. Ideally, preventive functions should go beyond this to include:

- a discrete corruption prevention function;
- the capacity to undertake independent, police-related research; and
- the use of initial and ongoing professional education as a tool to integrate ethics into everyday policing.

When proactive and reactive functions are used in an holistic way, long-term change is possible.

Publications of Interest

The Commissioner advises that the following publications might be of interest to those interested in civilian oversight of policing:

- *The Interim APEC Report*, RCMP, August 2001. Available on the Internet at http://www.cpc-cpp.gc.ca.
- *Strategic Human Resources Analysis of Public Policing in Canada*, commissioned by the Canadian Association of Chiefs of Police and the Canadian Police Association, 2001.
- *Civilian Oversight of Policing*, Goldsmith A. & Lewis, C. (eds.), Hart Publishing, Oxford & Portland, Oregon, 2000.
- *Investigation of Police Action at the World Economic Forum Demonstrations*, September 2000, tabled June 2001, Ombudsman of Victoria. Available on the Internet at www.ombudsman.vic.gov.au.
- Statement by the Police Ombudsman for Northern Ireland on her investigation of matters relating to the Omagh Bombing on August 15, 1998. Available on the Internet at www.policeombudsman.org.
- *Police Accountability and Citizen Review: A Leadership Opportunity for Police Chiefs*. A project response publication prepared by the International Association of Chiefs of Police.

Available on the OPCC Web site at www.opcc.bc.ca:

- *Growbusters Report*, Larry Campbell, July 2001.
- *Police Culture & the "Code of Silence,"* John Westwood, July 2001.

Mediators

Section 54.1(5) of the *Police Act* states: "The discipline authority may, for the purposes of informally resolving a complaint under this section, do one or both of the following:

(a) use any one or more means of alternate dispute resolution;

(b) enlist the assistance of a neutral and independent person as mediator."

Section 54.1(8) of the *Police Act* requires the Police Complaint Commissioner to make available a list of neutral dispute resolution service providers and agencies to help complainants with the informal resolution process, and the person with whom a public trust complaint is lodged must provide that list to the complainant when the complaint is lodged.

Section 54.1(11) of the Act states:

> "The complainant or respondent may ask the police complaint commissioner to appoint a mediator, if one has not already been enlisted under subsection (5)(b), and the police complaint commissioner may appoint a mediator if the police complaint commissioner considers it appropriate."

A list of neutral dispute resolution providers and mediators is available from the Office of the Police Complaint Commissioner.

List of Support Groups

Section 54.1(9) of the *Police Act* states: "In the informal resolution process, *a complainant may enlist the assistance of a support person of the complainant's choice* or may ask the police complaint commissioner to appoint a support person for the complainant."

Section 54.1(10) of the Act defines the support person's involvement in the informal resolution process:

> "A support person ... may (a) be present at any interview about the complaint and at any mediation or informal resolution, and (b) participate at any of those sessions with the consent of the respondent."

Section 54.1(8) of the Act requires the Police Complaint Commissioner to provide a list of support groups to help complainants with the informal resolution process.

The following agencies have agreed to be listed as support groups for this purpose. Complainants are not limited to this list in choosing a support group or person.

Inter-cultural Association of Greater Victoria

930 Balmoral Rd. Telephone: (250) 388-4728
Victoria, BC V8T 1A8 Fax: (250) 386-4395
Contact: Jean McRae, Executive Director

British Columbia Civil Liberties Association

425-815 West Hastings Street Telephone: (604) 687-2919
Vancouver, BC V6C 1B4
Contact: Murray Mollard, Policy Director

S.U.C.C.E.S.S.

28 West Pender Street Telephone: (604) 408-7238
Vancouver, BC V6B 1R6
Contact: Joseph Lau, Program Director

Vancouver Police and Native Liaison Society

324 Main Street, Telephone: (604) 687-8411
Vancouver BC V6A 2T2 Fax: (604) 682-2967
Contact: Freda Ens, Executive Director

Contact Names and Numbers

Office of the Police Complaint Commissioner
Suite # 900 - 1111 Melville Street
Vancouver, B.C. V6E 3V6

Phone: (604) 660-2385
Fax: (604) 660-1223
Web site http://www.opcc.bc.ca
Toll free outside of Vancouver:
Call Enquiry BC: 1-800-663-7867
and ask to be connected to the
Office of the Police Complaint Commissioner.

Contact municipal police forces directly:

Abbotsford	(604) 859-5225
Central Saanich	(250) 652-4441
Delta	(604) 946-4411
Esquimalt	(250) 414-7105
Nelson	(250) 354-3919
New Westminster	(604) 525-5411
Oak Bay	(250) 592-2424
Port Moody	(604) 461-3456
Saanich	(250) 475-4321
Vancouver	(604) 717-3535
Victoria	(250) 995-7654
West Vancouver	(604) 925-7300

Complaints against the RCMP in British Columbia should be directed to:
Commission for Public Complaints against the RCMP
7337 - 137 Street, Suite 102
Surrey, BC V3W 1A4
Phone: (604) 501-4080
Fax: (604) 501-4095
Toll free: 1-800-665-6878